

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARY MOTZER,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

) Case No. DSEP-02-0007

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at the West Seattle Training Center, Pine Conference Room, 4045 Delridge Way SW, Seattle, Washington, on May 30, 2003.

1.2 **Appearances.** Appellant Mary Motzer appeared *pro se*. Rob Kosin, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal.** This is an appeal from a disability separation.

1.4 **Citations Discussed.** Smith v. Employment Security Dept., PAB No. S92-002 (1992); WAC 356-05-102; WAC 356-35-010.

II. FINDINGS OF FACT

2.1 Appellant Mary Motzer was a permanent employee for Respondent Department of Transportation. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on July 5, 2002.

2.2 Appellant became permanently employed with the Department of Transportation in July 1989. Appellant was a Maintenance Technician 2. She performed very physical work, including road maintenance and cleaning, lifting heavy refuse bags, digging ditches, and traffic control. The essential functions of the Maintenance Technician 2 position required Appellant to lift heavy objects and she engaged in repetitive movements, including bending, kneeling and twisting.

2.3 On May 18, 2001, Appellant suffered an on-the-job injury to her neck and lower back. Appellant was unable to perform the essential functions of her position, and she has not worked since that date.

2.4 From May 2001 through April 2002, the department engaged in collaborative efforts with Appellant's physicians to determine whether Appellant could return to work. Appellant's physicians have not released Appellant to return to work to perform the Maintenance Technician 2 duties nor have they indicated that modifications could be made to Appellant's position that would allow her to return to work and perform the essential functions of her position.

2.5 As a part of the department's accommodation process, Kitty Tyler, Human Resource Consultant and ADA Coordinator for DOT NW Region conducted a search for vacant, funded positions for which Appellant was qualified. In August 2001, Ms. Tyler identified a Dump Truck

1 Driver position as a light-duty position. The Dump Truck Driver job analysis was submitted to
2 Appellant's physician. Dr. M. Clowery concluded that Appellant could not perform driving duties
3 because she was taking medications that could impair her driving abilities.

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5 2.6 Appellant's physician indicated that Appellant could perform a job clerical in nature,
6 however, after reviewing Appellant's experience, training and qualifications, Ms. Tyler determined
7 that Appellant was not qualified because she had no clerical experience. Appellant's work
8 experience was in manual and physical labor.

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10 2.7 Prior to implementing Appellant's separation due to disability, Thomas E. Lentz, Assistant
11 Regional Administrator for Maintenance & Traffic and Appellant's appointing authority, consulted
12 with Ms. Tyler and reviewed Appellant's medical history and prognosis reports. Mr. Lentz
13 concluded that it was not reasonable for the department to leave Appellant on leave for an indefinite
14 period of time and to continue to have her position open without any definitive return to work date.
15 Mr. Lentz concluded that separating Appellant due to her disability was the appropriate action
16 based on the information and doctor reports he received, which included two medical
17 determinations that Appellant could not perform the essential functions of her Maintenance
18 Technician position and the department's inability to find her another suitable position.

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20 2.8 By letter dated June 17, 2002, Mr. Lentz formally notified Appellant of her separation due to
21 disability and the department's inability to accommodate her physical disability. Mr. Lentz also
22 informed Appellant that if her medical condition sufficiently improved during the 12-month period
23 following her separation, she could request that her name be placed on the reduction-in-force and
24 promotional registers for which she was eligible.

2.9 Appellant continues to be disabled, and she has not received a physician's release to return to work.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that it relied on the appropriate feedback from Appellant's physician that Appellant was disabled and unable to perform the essential duties of her Maintenance Technician 2 position. Respondent asserts that Appellant's physician did not indicate that essential duties of Appellant's position could be modified or accommodated in order for Appellant to perform them. Respondent asserts that good faith efforts were made to find other positions for Appellant. Respondent argues that it has complied with WAC 356-35-010 by making a good faith effort to accommodate Appellant's disability and that the department's determination to separate Appellant should be affirmed.

3.2 Appellant admits that she is unable to return to work. Appellant argues, however, that the department separated her in retaliation because of a complaint several years earlier. Appellant also asserts that she was exposed to a hostile and abusive environment and that other injured employees were accommodated by the department for longer periods of time.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 At a hearing on appeal of a disability separation, the appointing authority has the burden of supporting the action that was initiated. WAC 358-30-170. Respondent has the burden of proving that Appellant was unable to perform the duties of the position as specified in the letter of

1 separation and that reasonable accommodation cannot be provided. Smith v. Employment Security
2 Dept., PAB No. S92-002 (1992).

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4 4.3 The issue here is whether Respondent complied with the provisions of WAC 356-35-010
5 when it separated Appellant from her position as a Maintenance Technical 2 due to her disability.
6 WAC 356-05-120 defines a disability as “[a]n employee’s physical and/or mental inability to
7 perform adequately the essential duties of the job class.” Appellant’s physician stated that
8 Appellant could not perform the essential duties of her position, and Appellant currently remains
9 disabled. Therefore, Appellant’s condition meets the definition of a disability.

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11 4.4 WAC 356-35-010(1) provides, in part, that an appointing authority “may initiate a disability
12 separation of a permanent employee only when reasonable accommodations cannot be provided. . .”
13 The department took the necessary steps to determine whether Appellant could perform the
14 essential duties of her position with or without accommodation. However, based on Dr. Clowry’s
15 prognosis, the appointing authority reasonably concluded that accommodation could not be
16 provided to enable Appellant to perform the essential functions of her Maintenance Technician
17 position. Furthermore, the department could not locate another position for which Appellant met
18 the qualifications, even though several vacancy searches were completed.

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20 4.5 Appellant provided no evidence to support her contention that the department’s decision to
21 separate her due to disability was retaliatory in nature, that she was subjected to a hostile and
22 abusive work environment or that the department failed to take reasonable steps to accommodate
23 her disability.

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25 4.6 Respondent has met its burden of proving that Appellant’s separation due to disability
26 complied with the requirements of WAC 356-35-010, that Appellant could not perform the essential

1 duties of her position and that reasonable accommodation could not be provided. Therefore, the
2 appeal of Mary Motzer should be denied.

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V. ORDER

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mary Motzer is denied.

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DATED this _____ day of _____, 2003.

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WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Busse Nutley, Member

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